

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement		GRANT NUMBER (FAIN): 98247702		DATE OF AWARD 12/10/2009		
			MODIFICATION NUMBER: 0				
			PROGRAM CODE: V		TYPE OF ACTION Continuation		MAILING DATE 12/17/2009
			PAYMENT METHOD: Advance		ACH# 20043		
RECIPIENT TYPE: Indian Tribe			Send Payment Request to: Las Vegas Finance Center				
RECIPIENT: Saint Regis Mohawk Tribe 412 State Road Route 37 Akwesasne, NY 13655 EIN: 16-1007650			PAYEE: Saint Regis Mohawk Tribe 412 State Road Route 37 Akwesasne, NY 13655				
PROJECT MANAGER Ken Jock 412 State Road Route 37 Akwesasne, NY 13655 E-Mail: ken.jock@srmt-nsn.gov Phone: 518-358-5937		EPA PROJECT OFFICER Joel Singerman 290 Broadway, ERRD/NYRB/CNYR New York, NY 10007-1866 E-Mail: Singerman.Joel@epamail.epa.gov Phone: 212-637-4258		EPA GRANT SPECIALIST Cynthia Pabon Grants and contracts Management Branch, OPM/GCMB E-Mail: pabon.cynthia@epa.gov Phone: 212-637-3405			
PROJECT TITLE AND DESCRIPTION St. Regis Mohawk Tribe Support Agency Assistance Related to the Reynolds Metals Superfund Site This agreement funds the participation of the recipient in reviewing, developing, and overseeing post-remediation monitoring and maintenance associated with the Reynolds Metals Superfund site. This includes the oversight of investigative and sampling work being performed by the potentially responsible party's contractor, reviewing information collected by that contractor and documents prepared by that contractor and EPA, and attending site-related meetings.							
BUDGET PERIOD 01/01/2010 - 12/31/2011		PROJECT PERIOD 01/01/2010 - 12/31/2011		TOTAL BUDGET PERIOD COST \$48,104.00	TOTAL PROJECT PERIOD COST \$48,104.00		
NOTICE OF AWARD							
Based on your Application dated 10/19/2009 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$48,104. EPA agrees to cost-share <u>100.00%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$48,104. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.							
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE				
ORGANIZATION / ADDRESS Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866			ORGANIZATION / ADDRESS U.S. EPA, Region 2 Emergency and Remedial Response Division 290 Broadway New York, NY 10007-1866				
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY							
Digital signature applied by EPA Award Official Donna J. Vizian - Assistant Regional Administrator for Policy and Management					DATE 12/10/2009		

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 48,104	\$ 48,104
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 48,104	\$ 48,104

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.802 - Superfund State Political Subdivision and Indian Tribe Site Specific Cooperative Agreements	CERCLA: Sec. 104(d)(1)	40 CFR PTS 31 & 35 SUBPT O

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
REYNOLDS	1002HE0074	10	TR2B	02D	302DD2E	4185	024DMA01	C002	48,104
									48,104

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$19,458
2. Fringe Benefits	\$7,155
3. Travel	\$4,448
4. Equipment	\$0
5. Supplies	\$4,430
6. Contractual	\$6,000
7. Construction	\$0
8. Other	\$3,332
9. Total Direct Charges	\$44,823
10. Indirect Costs: % Base	\$3,281
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %.)	\$48,104
12. Total Approved Assistance Amount	\$48,104
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$48,104
15. Total EPA Amount Awarded To Date	\$48,104

Administrative Conditions

a. GENERAL CONDITION

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter 1, Subchapter B. The recipient warrants, represents, and agrees that it, and all its contractors, employees and representatives, will comply with all applicable provisions of 40 CFR Chapter 1, Subchapter B, INCLUDING BUT NOT LIMITED TO the provisions of 40 CFR Part 35 Subpart O.

b. TERMS AND CONDITIONS

1. ADVANCE METHOD OF PAYMENT

In accordance with EPA regulations, the recipient is authorized to receive advance payments under this agreement, provided that the recipient takes action to minimize the time elapsing between the transfer of funds from EPA and the disbursement of those funds. The recipient shall request Federal payments by completing the EPA Payment Requests Form (EPA Form 190-F-04-001) and faxing it to the Las Vegas Finance Center at 702-798-2423. This form can be found at www.epa.gov/ogd/forms/forms.htm.

2. DRUG-FREE WORKPLACE CERTIFICATION FOR ALL EPA RECIPIENTS

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html.

3. FINANCIAL REQUIREMENTS

Under the Automated Standard Application for Payments (ASAP), the recipient initiates an electronic or voice-activated telephone payment request which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's account. Approved funds are credited to the recipient organization at the financial institution identified on the recipient's ASAP enrollment application.

The recipient agrees to the following conditions in accepting this assistance agreement:

- (a) Cash draw down will be made only as actually needed for its disbursement;
- (b) The recipient will provide timely reporting of cash disbursements and balances as

required;

- (c) The recipient will impose the same standards of timing and reporting on secondary recipients, if any.

Failure on the part of the recipient to comply with the above conditions may cause the undisbursed portions of the assistance agreement to be revoked and financing method changed to a reimbursable basis.

4. FEDERAL FINANCIAL REPORTS/GRANT CLOSEOUT

A) Interim Federal Financial Reports (FFRs)

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following each anniversary of the start date of the agreement.

B) Final Federal Financial Report

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at <http://www.epa.gov/ocfo/finservices/forms.htm> . All FFRs must be submitted to the Las Vegas Finance Center:

U.S. Environmental Protection Agency
Las Vegas Finance Center
PO Box 98515
Las Vegas, NV 89119

or by Fax to: 702-798-2423.

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

C) Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR. At that time, the recipient must submit the following forms/reports to the EPA Region 2 Grants and Contracts Management Branch, if applicable:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

Additionally, the recipient's Final Request for Payment should be submitted to the LVFC.

5. HOTEL-MOTEL FIRE SAFETY

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

6. LOBBYING AND LITIGATION - ALL RECIPIENTS

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

RESTRICTIONS ON LOBBYING

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

7. MANAGEMENT FEES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

8. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE (PART 31)

If a no cost time extension is necessary to extend the period of availability of funds (budget period), the recipient must submit a written request, including a justification as to why additional time is needed and an estimated date of completion to the EPA, Region 2, Grants and Contracts Management Branch prior to the budget/project period expiration dates. An interim FFR (SF-425), which covers all expenditures and obligations to date, must also be submitted to the Las Vegas Finance Office at the address below.

U.S. Environmental Protection Agency
Las Vegas Finance Center
PO Box 98515

Las Vegas, NV 89119

or by Fax to: 702-798-2423.

9. RECYCLING AND WASTE PREVENTION

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007) and or 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

10. REIMBURSEMENT LIMITATION

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

11. SINGLE AUDITS

In accordance with OMB Circular A-133, which implements the single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit a copy of the SF-SAC and a Single Audit Report Package. **For fiscal periods 2002 to 2007 recipients are to submit hardcopy to the following address:**

Federal Audit Clearinghouse
1201 East 10th Street
Jeffersonville, IN 47132

For fiscal periods 2008 and beyond the recipient MUST submit a copy of the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. Complete information on how to accomplish the 2008 and beyond Single Audit Submissions is available on the Federal Audit Clearinghouse Web site:

<http://harvester.census.gov/fac/>

12. SUBAWARD POLICY

a. The recipient agrees to:

- (1) Establish all subaward agreements in writing;
- (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
- (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;

- (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
 - (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
 - (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
 - (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
 - (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.
- b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and <http://www.whitehouse.gov/omb/circulars/a133/a133.html>.
- c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

13. SUSPENSION AND DEBARMENT

Recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." Recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epis.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

14. TRAFFICKING VICTIM PROTECTION ACT OF 2000

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

- a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for

imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

Prohibition Statement - You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

15. INDIRECT COSTS

If the recipient has submitted an indirect cost rate proposal to the cognizant Federal agency but does not yet have an approved rate, it must submit a copy to the EPA Regional Office of the final or provisional Indirect Cost Negotiation Agreement that covers the agreement's budget period before it may charge indirect costs against this Assistance Agreement. If the recipient's negotiated rate does not extend through the life of the Assistance Agreement, additional indirect cost rate proposal(s) must be submitted until the full life of the Assistance Agreement is covered by negotiated indirect cost rates. The recipient **will not charge nor claim for reimbursement any indirect costs that are not covered by a negotiated indirect cost rate.**

16. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

Pursuant to 40 CFR, Section 33.412, Tribal and Insular Area recipients are not required to negotiate a fair share goal until 3 years from the effective date of the DBE Rule. After that 3-year phase-in period has expired, Tribal and Insular Area recipients are required to adhere to the full requirements of 40 CFR, Part 33, Subpart D, as applicable.

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained.

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.

The reports must be submitted **annually** for the period ending September 30th for:

- 40 CFR Part 30 Recipients (Non-profits and Institutions of Higher Education); and/or
- 40 CFR Part 35 Subpart A and Subpart B Recipients.

The reports are due within 30 days of the end of the annual reporting period (October 30th). Reports should be sent to Michele Junker, the Region 2 DBE Coordinator. Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at <http://www.epa.gov/osbp/grants.htm>

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

Programmatic Conditions**1. AUTHORITY**

The recipient acknowledges that this Cooperative Agreement has been entered into pursuant to the following authorities and the recipient agrees to comply with the applicable requirements contained in such authorities:

- (a) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., as amended ("CERCLA").
- (b) 31 U.S.C. Section 6301 et seq.
- (c) 40 CFR Chapter I, Subchapter B including, without limitation, 40 C.F.R. Part 35 Subpart O.
- (d) 40 CFR Chapter I, Subchapter J including, without limitation, 40 C.F.R. Part 300, Subpart F.

2. PROMPT PAYMENT ACT PROVISIONS

In accordance with the Prompt Payment Act, 31 U.S.C. Section 3901 et seq., funds will not be used by the recipient for the payment of interest penalties to contractors when bills are paid late, nor may interest penalties be used to satisfy cost sharing requirements. Obligations to pay such interest penalties will not be obligations of the United States.

3. PURPOSE - SUPPORT AGENCY ASSISTANCE ACTIVITIES

The recipient has agreed to conduct the support agency assistance activities covered by this Agreement during the federal-lead response action initiated at the Site. The recipient understands that EPA funding for support agency assistance does not change the contractual relationship between EPA (or, if applicable, any private party conducting the response action subject to EPA oversight) and the response contractor. The recipient may not direct work of EPA (or, if applicable, any private party conducting the response action subject to EPA oversight) and/or its response contractors and subcontractors.

EPA execution of this Cooperative Agreement is not intended to, nor does it, constitute any agreement or commitment by EPA, either express or implied, to provide any additional federal funds for any future activities relating to the Site.

4. PARTIES' REPRESENTATIVES

- (a) EPA has designated Joel Singerman, Chief, Central New York Remediation Section, Emergency and Remedial Response Division, United States Environmental Protection Agency, Region 2, 290 Broadway, New York, New York, 10007-1866, (212) 637-4258 to serve as EPA Project Officer for this Cooperative Agreement.
- (b) The recipient has designated Mr. Ken Jock, Environmental Division Director, Saint Regis Mohawk Tribe, 412 State Route 37, Akwesasne, New York 13655, (518) 358-5937, to serve as the Project Manager for the Cooperative Agreement.

5. SITE ACCESS

- (a) EPA will attempt to obtain Site access (or, if applicable, to require access to be secured by any private party performing the response action subject to EPA oversight).
- (b) With advance notice to the EPA Project Officer, and in compliance with a Site safety plan, employees or other representatives of the recipient shall have access to the Site to review work in progress or to perform activities in connection with enforcement or cost recovery actions related to the Site.
- (c) EPA shall have no liability for any harm to any person whether or not caused by acts or omissions of any representatives of EPA during the course of any access to the Site by the recipient or anyone deriving or claiming right of access through the recipient and the recipient agrees to inform all such persons of this provision.

6. INFORMATION REGARDING THE SITE

- (a) At EPA's request and to the extent allowed by state law, the recipient shall make available to EPA any information in its possession concerning the Site. At the request of EPA, representatives of the recipient will meet with EPA to discuss the progress of the projects and exchange Site information.
- (b) Unless otherwise required by applicable state or federal law, any information which may potentially affect present or planned enforcement actions or investigations shall not be released to the public by the recipient unless approved by both EPA's Region 2 Office of Regional Counsel and New York State Department of Law. The recipient shall notify EPA of all such information publicly released by it.
- (c) The recipient shall advise EPA of all enforcement actions taken or to be initiated by it regarding the Site.

7. THIRD PARTIES

- (a) This Cooperative Agreement is intended to benefit only the recipient and EPA. It extends no benefit or right to any third party not a signatory to this Cooperative

Agreement.

- (b) Nothing contained in this Cooperative Agreement shall create or be interpreted or construed to result in:
- (i) any liability to the recipient or to the United States for loss resulting from bodily injury or property damage to any third party for acts or omissions in connection with the Site or this Cooperative Agreement;
 - (ii) the waiver of any of rights or immunities provided by law to the recipient or EPA;
 - (iii) any obligation or responsibility by the recipient or EPA to any third party by way of contract or otherwise;
 - (iv) the waiver of any right of EPA to recover any costs pursuant to CERCLA or otherwise to enforce the provisions of CERCLA or any other law against any third party;
 - (v) the waiver of any right of the recipient to enforce any applicable law against any third party.

8. DISCLAIMER OF AGENCY RELATIONSHIP

Nothing contained in this Cooperative Agreement shall be construed to create, either expressly or by implication, the relationship of agency between the recipient and EPA.

9. AMENDMENTS

Any change in this Cooperative Agreement must be agreed to by both parties in writing.

10. SUBSTANTIAL INVOLVEMENT

EPA's involvement in Cooperative Agreement No. V 98247702-0: EPA will be substantially involved with the recipient during the performance of the project. Substantial involvement includes joint site-related meetings, operational involvement, participation, and collaboration between EPA and the recipient on the project's overall direction. Notwithstanding EPA's substantial involvement, the recipient remains responsible for complying with all of the terms and conditions of this cooperative agreement and with federal law, regulations, and policy applicable to this grant.

11. PERFORMANCE REPORTING AND FINAL PERFORMANCE REPORT

Performance Reports

The recipient shall submit, to the EPA Project Officer, semiannual performance reports (preferably electronic copies), due each May 30th and November 30th. In accordance with 40 CFR §31.40(b), the recipient agrees to include in performance reports submitted under this agreement brief information on each of the following areas:

- 1) a comparison of actual accomplishments with the anticipated outputs/outcomes specified in

the assistance agreement work plan;

2) reasons why anticipated outputs/outcomes were not met:

3) other pertinent information, including:

1. An explanation of work accomplished during the reporting period along with a description of corrective measures for any delays or problems;

2. A comparison of the percentage of project completion to the project schedule and an explanation of significant discrepancies;

3. A comparison of the estimated funds spent to date to planned expenditures and an explanation of significant discrepancies; and

4. An estimate of the time and funds needed to complete the work required in the agreement and a justification for any increase.

The fiscal status should include:

Total Funds Available Under Cooperative Agreement

Total Funds Spent

Funds Spent During the Quarter Covered by This Report

Expected Fund Expenditure Over Next Six Months

Estimated Funds Needed After Next Six Months to Complete

Current Project and Budget Period End

Estimated Project End

In accordance with 40 CFR §31.40(d), the recipient agrees that it will notify EPA of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

Final Performance Report

The recipient agrees to submit two copies of the Final Performance Report to the EPA Project Officer. The Final Project Report is due within 90 days after the end of the budget/project period. The report will include any agreed-upon work-product(s) resulting from the project and the following:

1) an abstract or overview of the project including completed workplan activities;

2) a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the assistance agreement work plan;

3) reasons why anticipated outputs/outcomes were not met:

4) other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs.

5) the methods to be used to effectively disseminate project information and/or continue the benefits of this project (although the project itself may not be continuing);

6) materials generated in connection with project activities (e.g. , workshop announcements, newspaper/newsletter announcements, articles or releases, press packets, pamphlets, etc.).